IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

Crl.MC.No. 615 of 2007()

CC.1454/2006 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHAVAKKAD
CR.NO.10/2006 OF CHAVAKKAD POLICE STATION

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PETITIONER: PETITIONERS/ACCUSED 2,3 AND 4

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1. BEEVATHU, W/O.LATE MUHAMMED, 70 YEARS,
   VALIYIL HOUSE, P.O.EDAKKAZHIYOOR, THRISSUR.

2. SHAMEERA, D/O.LATE MUHAMMED,
   VALIYIL HOUSE, P.O.EDAKKAZHIYOOR, THRISSUR
   NOW RESIDING AT 'ROSE VILLA KALATHIL',
   P.O.PAINGANNUR, VALANCHERRY, MALAPPURAM DISTRICT.

3. ABDUL MUNEER, D/O.LATE MUHAMMED,
   P.O.EDAKKAZHIYOOR, THRISSUR, NOW RESIDING AT
   DISTRICT CO-OP.BANK QUARTERS, PAREMAVU,
   CHERUTHONI, IDUKKI COLONY P.O.

BY ADV. SRI.S.RAJEEV

RESPONDENTS/PETITIONERS/STATE:

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1. BASHEERA, D/O.KUNHU MOHAMMED,
   AGED 24 YEARS, MOOCHIKKOOTTATHIL HOUSE,
   P.O.KULATHUR, MALAPPURAM.

2. STATE OF KERALA,
   REPRESENTED BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA,
   ERNAKULAM, CRIME NO.10 OF 2006
   OF CHAVAKKAD POLICE STATION.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 07/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.615 of 2007

Dated this the 7th day of March 2007

O R D E R

The petitioners are accused 2,3 and 4 in a prosecution under Section 498(A) I.P.C. Proceedings have been initiated on the basis of a private complaint filed by the first respondent. The first accused is the husband of the first respondent. The petitioners are mother-in-law, sister-in-law and brother-in-law respectively of the first respondent. The first respondent had filed a complaint before the police against all the four accused persons. The police, after investigation, had come to the conclusion that only the first accused is guilty of the alleged offences. The petitioners were deleted from the array of parties. Cognizance was taken against the first accused on the basis of such final report filed by the police. Dissatisfied by the final report, the first respondent had approached the learned Magistrate with a protest complaint. It is in that protest complaint that cognizance has been taken against all the four accused persons including the petitioners herein.

2. The learned counsel for the petitioners submits that cognizance taken against the petitioners is bad in law and unsustainable. The learned Magistrate had not considered all the relevant inputs alertly. The learned Magistrate ought to have taken note of the fact that the police had referred the complaint against the petitioners as unsustainable. Greater degree of care must have been employed in these circumstances before cognizance was taken. The dictum in Kader vs. State of Kerala [1999(3)KLT 262] was not alertly borne in mind by the learned Magistrate when cognizance was taken. In these circumstances, powers under Section 482 Cr.P.C may be invoked and further proceedings may be quashed, it is prayed. The learned counsel relies on the fact that in an earlier letter addressed to the President of the Local Juma Masjid, no allegations have been raised against the petitioners herein.

3. I shall scrupulously avoid any expression of opinion on merits which would fetter the discretion of the learned Magistrate when he considers the allegations at appropriate later stages. I take note of the submission of the learned counsel for the petitioners that the second accused, mother-in-law has

passed seventy years and she is critically ill. I take note of the fact that the police, after investigation, had come to the conclusion that the petitioners are not guilty of the alleged offences. I am, in these circumstances, satisfied that though the relief of quashing the proceedings cannot and need not be granted to the petitioners, the petitioners can be granted an opportunity to claim discharge and avoid the obligation to appear personally before the learned Magistrate until the learned Magistrate takes a decision on the question of discharge under Section 245(2) or 245(1) Cr.P.C.

4. In all cases where cognizance is taken by the learned Magistrate on a complaint/protest complaint, such cognizance is taken ex parte without and before giving the indictees an opportunity to be heard. The law does not leave such indictees against whom cognizance of warrant offences has been taken without any remedy against the ex parte cognizance taken against them. They can appear before the learned Magistrate and urge that they are entitled to be discharged at the threshold itself under Section 245(2) Cr.P.C. The mere fact that cognizance has been taken already will not fetter the jurisdiction

of the learned Magistrate to consider the plea of discharge under Section 245(2) Cr.P.C on the materials then available. Such indictees can also wait for the completion of the enquiry under Section 244 Cr.P.C and then claim discharge under Section 245 (1) Cr.P.C.

5. In the peculiar facts and circumstances of this case, I am satisfied that the interests of justice will be served eminently by permitting the petitioner to appear through counsel until the learned Magistrate decides (if he so decides) that charges deserve to be framed under Section 246 Cr.P.C.

6. This Criminal Miscellaneous Case is, in these circumstances, allowed in part. The prayer for quashing the proceedings is turned down. But it is directed that the petitioners shall be permitted by the learned Magistrate to appear through their counsel until the learned Magistrate takes a decision (if such decision be taken) that charges are liable to be framed under Section 246 Cr.P.C.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006